CANCELLED

PAGE No. 1

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IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR (C.G.)

Single Bench

SECOND APPEAL NO.:- 84 / 2006.

APPELLANTS
DEFENDANTS

1. **Kamla Bai** aged about 65 years, widow of late Pursottam Gupta

2. **Rajeev Gupta**, aged about 36 years S/o. Pursottam Gupta

3. **Sanjiv Gupta** aged about 28 years S/o. Pursottam Gupta all resident of main road Bagbahara Tahsil & Distt. Mahasamund (C.G.)

P.R. No. 5/9/06
Presented by Shri Bhagwati Verma
dated 28/2/06

VERSUS

Ibrahim Haji Shakur Mohammedan (Dead) through legal representatives

RESPONDENTS
PLAINTIFFS

1. **Idrish** aged about 50 years

2. **Shabbir** aged about 46 yrs.

3. **Anik** aged about 42 years

4. **Wahid** aged about 36 years all are S/o. Late Ibrahim resident of Main road Saraipali

5. **Smt. Fatima Begum** aged about 49 years widow of Ibrahim (so called), resident of Lalpur road , near Akansha Video Bagbahara Distt. Mahasamund (C.G.)

6. **Smt.Saroj sahu,** aged about 50 years Wife of Mr. Ashok Kumar Sahu Excise Contractor resident of Bargarh, Distt.Bargarh (Orissa)

7. **Smt. Shashi Gupta**, aged about 48 years, wife of Brij Lal Gupta resident of behind the Apsara Talkies , Santara Badi,Distt. Durg.

Durg

Prakash Tiwari
ADVOCATE

8. **Smt.Kanchan Sahu** aged about 45 years wife of Mr. Kamlesh Sahu resident of near Ram Mandir Gang para Durg Distt. Durg(C.G.)

9. **Smt. Kiran Sahu** wife of Mr. Hira Lal Sahu resident of near Milk Dairy new Shanti nagar Raipur Distt.Raipur (C.G.)

10. **Smt.Sushila Jaiswal** aged about 36 years wife of Mr. Suresh Jaiswal resident of infront of Karmachari Bhavan Budha Para Raipur Distt. Raipur (C.G.)

11. **Smt. Smita Sahu** aged about 22 years wife Mr. BrijLal Sahu resident of near Garima Provision stores pahadi Chowk Gudiyari Raipur Distt. Raipur (C.G.)

Valuation of appeal: Rs. 2880/- (As in court below)
Court fee paid: Rs. 328/- (As in court below)
Court Fees Affixed in S.A.: Rs. 328/- (As in first appeal)

SECOND APPEAL U/S 100 OF THE CIVIL PROCEDURE CODE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

S.A. No. 84 सन् 2006

मामला क्रमांक

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

03/04/2006

On a mention being made, the case is taken up for hearing.

Shri Prakash Tiwari, Counsel for the appellant.

None for the respondents.

Heard on admission and on M.C.P.No. 318/2006.

Ibrahim filed a suit against Purushottam Gupta for eviction and damages. The suit house was let on rent by Ibrahim to Purushottam. The suit house is situated at Bagbahara, where the provisions of Chhattisgarh Accommodation Control Act, 1961 does not apply. Therefore, after termination of tenancy under Section 106 of the Transfer of the Property Act, the suit for recovery of possession and damages has been filed. During pendency of the suit Ibrahim died and the names of his legal heirs were brought on record.

Learned trial Court vide judgment and decree dated 09/12/2000 passed in Civil Suit No.33-A/98 held that Purushottam was tenant of Ibrahim on a monthly rent of Rs.90/. His tenancy has been terminated vide notice dated 30/08/1995 and since 30/09/1995 the possession by Purushottam Gupta is unauthorized, therefore, decreed the suit for possession and damages @ Rs.10/- per day. Aggrieved by the judgment and decree passed by the trial Court, Civil Appeal bearing No.3-A/2001 has been filed by the tenant. Appellants who were legal heirs of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

S.A No. 84
मामला क्रमांक ..... सन् 2006

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the tenant – Purushottam represented the appeal after the death of Purushottam. Learned Ist Appellate Court after hearing both the parties confirmed the findings of the trial Court and dismissed the appeal. Being aggrieved by the judgment and decree dated 22/12/2005 passed by First Additional District Judge, Mahasamund in Civil Appeal No.3-A/2001, this appeal has been filed by the defendant/tenant.

Appellant's contention is that notice served under Section 106 of the Transfer of Property Act, was not legal. Damages awarded to plaintiff is highly disproportionate and authenticity of Fatima Begam to be legal heir of Ibrahim, has not been adjudicated legally.

Both the Courts below have held that notice has been served on Purushottam in accordance with law. Admittedly, receipt of notice is not disputed and from concurrent findings, it is evident that the condition of 15 days notice has been complied with and nothing has been shown to suggest how the notice served on Purushottam was not legal. Admittedly, Purushottam and thereafter his legal representatives are in occupation of the suit accommodation and vide notice from 01/10/1995 damages @ Rs.10/- per day was claimed and both the Courts below had granted the same towards damages, nothing is on record to show that damage awarded to owner of the suit premises is

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

SA No. 84

मामला क्रमांक ..... सन् 2001

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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disproportionate or illegal. Respondent Idrish, Shabbir, Anik and Wahid are sons of Ibrahim. Admittedly Smt. Fatima Begam claiming herself as wife of Ibrahim intervened in the proceedings. Enquiry was made by the Court and thereafter Fatima Begam was also incorporated as legal representative. Here, it is pertinent to mention that the relationship of Fatima Begam with Ibrahim was not disputed by the appellant before the Court below.

I am of the opinion that the case completely rests on facts and both the Courts below concurrently decided the fact, their decision does not suffer from such infirmity which may amount to perversity or impair the validity of those findings on law, therefore, no substantial question of law is involved in this appeal, hence the appeal deserves to be dismissed summarily and is accordingly dismissed.

In view of above, M.(C).P. No. 318/2006 stands disposed of.

Sd/-
V.K.Shrivastava
Judge